

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	January 21, 2003
Time of Meeting:	6:30 p.m. (Closed Session) 7:30 p.m. (Regular Session)
Place of Meeting:	Council Chambers, City Hall

ROLL CALL Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:36 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

CLOSED SESSION Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following two items listed on the agenda:

1. CONFERENCE WITH LABOR NEGOTIATOR
(Pursuant to Government Code Section 54957.6)
Agency Negotiator: Art Hartinger
Employee Organizations: MEA

2. CONFERENCE WITH LABOR NEGOTIATOR
(Pursuant to Government Code Section 54957.6)
Agency Negotiator: Steve Mattas
Unrepresented Employee: City Manager

Mayor Esteves adjourned the meeting to closed session at 6:37 p.m.

The City Council meeting reconvened at 7:42 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

CLOSED SESSION ANNOUNCEMENTS There were no closed session announcements.

PLEDGE Mayor Esteves led the Council and audience in the Pledge of Allegiance.

MINUTES MOTION to approve the City Council minutes of January 7, 2003, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Dixon, Polanski.

Ayes: 5

SCHEDULE City Manager Tom Wilson noted that the February calendar should reflect February 12 and 17, 2003, as City holidays. Vice Mayor Dixon reported that the Megan's Law Committee meeting had been rescheduled for 8:00 a.m. on January 23 at the Police Station with Vice Mayor Dixon attending and Marsha Grilli would be replacing Althea Polanski as the School Board representative; on January 23 at 1:30 p.m. the Library Joint Powers Authority would be holding a work session versus a regular meeting and she would be attending.

Mayor Esteves noted that the February calendar should reflect Councilmember Polanski as the Council liaisons to the Parks, Recreation, and Cultural Resources Commission on the 3rd and the Community Advisory Commission on the 5th and the Tasman Corridor Policy Subcommittee should show Vice Mayor Dixon as the Council representative. Vice Mayor Dixon noted that the Transportation Subcommittee shown on the 13th would be changing its meeting schedule to meet on the last Thursday of the month at 5:30 p.m.

MOTION to approve the schedule of meetings as amended.

PRESENTATIONS

Mayor Esteves introduced Richard Santos, Director, District 3, Santa Clara Valley Water District, who had a presentation for the Council. Mr. Santos said he was present to say thank-you and offer his services to the Council and introduced Rick Callender, Public Relations Officer for the Water District, who was with him. Mr. Santos briefly commented on a number of project completions by the District, future capital projects, and urged the Council if there were trails they were looking at, to get that information soon to the District because there was \$13.8 million set aside from Measure B monies for trails in Santa Clara County. Mr. Santos thanked the Council for allowing him to be present and said he looked forward to working with the Council. Mayor Esteves thanked Mr. Santos for coming.

There was no one present from the Wildlife Center of Silicon Valley.

Mayor Esteves presented Certificates of Appointment to Coel Agustin, recently appointed to the Youth Advisory Commission; to Daniel Hay, recently re-appointed to the Youth Advisory Commission; to Paul Hay, recently re-appointed to the Planning Commission; to Marilyn Hay, recently appointed to the Library Advisory Commission; and to Deepka Lalwani, recently re-appointed to the Planning Commission.

With the assistance of Emergency Services Manager George Washburn and Fire Battalion Chief Americo Silvi, Mayor Esteves presented Commendations to the following individuals upon their completion of the training for the Strategic Actions for Emergencies (SAFE) Program: Marsha Grilli, Hilton Hoyt, Jeffrey LeValley, Jenifer Lind, Mike Mendizabal, Nancy Mendizabal, Stephen Tran, David Coburn, Honghanh Coburn, Marie Pham, Juniel-Butler, and Tim Phan. Unable to be present were: Kathy Duncan, David Harman, Susan McLain, Coleen Matsuno, Hui Kathy Liu, David Kolden, and Chelie Kolden.

Mayor Esteves invited representatives of the Tsu Chi Foundation, the Vietnamese Folk Arts Institute, the Milpitas High School Chinese and Vietnamese Clubs, and the Milpitas Community Library to join him at the podium. Mayor Esteves read a proclamation recognizing Chinese/Vietnamese New Year on February 1, 2003, and presented it to the group. Michael Chern, CEO, Tzu Chi Foundation, thanked the Mayor and Council for the recognition stating it was a great honor, this was a nice area and they wanted to make sure the area gets better so they would be spending their spare time taking care of the community and helping those less fortunate. Brenda Wong, Milpitas High School, invited the Council to attend a show on January 31st presented by the Milpitas Chinese/Vietnamese Club at three different times (10:10 a.m., 11:05 a.m., and 1:05 p.m.) and left a book telling the story of the Chinese Zodiac.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

Rob Means, Milpitas, suggested Milpitas impose a tax of its own to recoup the money the State was taking away because the programs being transferred to the City were programs that were needed. Mr. Means suggested the possibility of taxing vehicles, especially SUVs; opposed a tax on services because people performing services was a good thing; but taxing products - things that we buy and sell, we have enough things so go ahead and tax that.

Maria Nguyen, on behalf of the Vietnamese Art Institute, invited everyone to celebrate Chinese/Vietnamese New Year by attending a free concert at the Community Museum on January 29, 2003, and a commemorative dinner at Green Bamboo on February 8, 2003.

Isaac Hughes, reading from Local Government Records Management Guidelines, August 1999, City Clerk's Association, said he wanted to look at various documents described on pages C-25, C-26, and C-27 and encouraged the public to ask for this book.

Sam Robinson said he was a SUV owner and suggested taxing every drink, bottle, and can of every alcoholic beverage sold in the City.

ANNOUNCEMENTS

City Manager Wilson announced that the Rotary Club of Milpitas will be celebrating the Gene Schwab Award on Monday, January 27, 12:00 Noon at the Crowne Plaza; this year's winner was Judy Ward from the Public Works Department and Judy, along with all nominees would be recognized at the February 4, 2003, Council meeting.

Vice Mayor Dixon said she wanted to make a correction to the letter in the Milpitas Post last week from Councilmember Livengood that gave the impression the Mayor, Councilmember Polanski, and she were acting in an unconstitutional manner regarding access to the third floor at City Hall. Vice Mayor Dixon reported after the first motion failed, a second motion was voted unanimously that the subcommittee and staff would be coming back with a plan to incorporate access to the third floor, the entire administrative wing, and the City Clerk's Office. Vice Mayor Dixon announced that on January 8th, she was formally made a member of the Santa Clara County Emergency Preparedness Council and the Santa Clara Operational Council (EPC); one of the charges was to review and approve the dispersal of Federal and State grant money, in particular any grant proposals for the homeland security plan, and thanked Chief Weisgerber and Americo Silvi and George Washburn for their assistance in helping her get up to date on the issues; and, as the Council liaison to CEPAC, expressed thanks to the members of the SAFE groups honored earlier in the evening. Vice Mayor Dixon noted that Robert Finnie, a member of CEPAC, was also present in the audience and acknowledged Mr. Finnie, who was this year's Chair of the annual Elementary School Earthquake Evacuation/Mass Feeding Drill scheduled for April 24th at Weller School. Vice Mayor Dixon thanked staff and the Council for honoring her request for assistance to the School District in the area of emergency preparedness by purchasing 50 portable radios that soon would be transferred to the School District. Vice Mayor Dixon said on Saturday she and Councilmember Polanski stopped by Fire Station 1 to look at the former incident command vehicle that was now equipped for the Office of Emergency Services, SAFE, and RACES groups.

Vice Mayor Dixon reported on January 9th she was sworn in as an alternate to the VTA Board and since then had attended most of the standing committee meetings to get familiar with issues; ridership and revenues were down for the sixth quarter in a row, there will be reductions or deletions of routes, the vote will take place in April, and she would keep the Council informed of any information that comes in.

Councilmember Livengood reminded all City Commissioners that next week, January 30th, was the annual Commissioners' Recognition Dinner when the Council has the opportunity to say thank-you to all the Commissioners and he looked forward to that.

Mayor Esteves thanked Chef Martin Yan, owner of Yan Can, for helping the Milpitas High School PTSA in their fund-raising; thanked the Golden Hills Art Association for being the artists in the current Phantom Art Gallery on display at the Community Center; congratulated the Milpitas PAL Soccer and Football Leagues on their recent banquet and acknowledged Niranjana Gupta for his 16 years of service to the Milpitas PAL Soccer League; congratulated the new officers of the Milpitas AARP headed by Ed Connor; and announced that the Bay Area Air Quality Management District was giving a \$500 rebate for changing wood stoves to gas and for information, call staff.

AGENDA

Mayor Esteves announced that public input on agenda items would be limited to two minutes.

MOTION to approve the agenda, including Item 3A on the supplemental agenda.

M/S: Livengood, Dixon.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to remove an item from the Consent Calendar. Vice Mayor Dixon requested items 10 and 16 be removed for discussion and noted that she would also be requesting item RA6 on the Redevelopment Agency Consent Calendar be removed.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of items 10 and 16, in accordance with the staff recommendations.

M/S: Livengood, Dixon.

Ayes: 5

- *4. Reappointment Approved the reappointment of Bakshish Kaur Sandhu to the Senior Advisory Commission with a term expiring December 2004.
- *9. Wal-Mart Grant Accepted the \$1,000 Wal-Mart Safe Neighborhood Heroes Grant and increased the FY 02-03 budget appropriation for graffiti abatement by the same amount.
- *11. Ordinance No. 227.3 (Smoking) Waived full reading of Ordinance No. 227.3 and adopted Ordinance No. 227.3 amending Chapter 215 of Title V to prohibit smoking at entrances to City-owned buildings.
- *12. Ordinance No. 239.1 (Urban Runoff) Waived full reading beyond the title and adopted Ordinance No. 239.1 amending Sections 2, 6, 8, 11, repealing Sections 12-15, and adding new Sections 12-14 to Chapter 16, Title XI of the Milpitas Municipal Code.
- *13. Spring Valley Heights Water Shortage Emergency Adopted Resolution No. 7269 approving extension of emergency water supply for Spring Valley Heights.
- *15. MacKay and Soms (Project No. 4170) Authorized the City Manager to execute the agreement amendment with MacKay and Soms Civil Engineers, Inc., for additional consulting services beyond the scopes of the agreements, including completion of Right of Way Record of Survey Maps and the establishment of right-of-way monuments in the amount of \$15,677, subject to approval as to form by the City Attorney.
- *17. Public Safety Radios Awarded bid for the purchase of the communication radios and accessories to the lowest bidder, Motorola, Inc., in the amount of \$71,680.50 including tax and shipping.
- *18. Miscellaneous Vendors Approved the following purchase requests:
 - 1. \$6,794.52 to L N Curtis and Sons for the purchase of wildland firefighting clothing and gear for the Fire Department. (Funds are available from the Fire Department budget for this purchase.)
 - 2. \$15,000.00 to Santa Clara County Sheriff's Department for the City's estimated annual shared cost of the SLETS and automated warrant system computer access for the Police Department. (Funds are available from the Police Department operating budget for this service.)
 - 3. \$6,169.00 to JAECO Fire and Safety for the purchase of four Level A Hazardous material, fully encapsulated protective suits to restock inventory for the Fire Department. (Funds are available from the Fire Department operating budget for this purchase.)
- *19. Payroll Register Approved Payroll Register for the period ending December 28, 2002, in the amount of \$1,539,563.64.

PUBLIC HEARINGS

- 1. Weed Abatement Fire Marshal Patti Joki reported on December 3, 2002, the Council adopted a resolution declaring weeds on certain described properties to be a public nuisance, and this public hearing was an opportunity for property owners, who were mailed a notice of this hearing by the County Fire Marshal, to voice their objections.

Mayor Esteves opened the public hearing and invited comments. No one came forward.

MOTION to closed the public hearing.

M/S: Dixon, Livengood.

Isaac Hughes questioned who was responsible for weeds along freeways, weeds that grow next to private property, and weeds that grow in the roadways and gutters.

Fire Marshall Joki responded CALTRANS was responsible for weeds along the freeways and if Mr. Hughes had concerns with specific locations, he should call her and she would make sure CALTRANS

got out there; for larger properties, the City can abate some of the hazards but the majority are left on the list and again, if Mr. Hughes had certain locations he was concerned about, he should contact her; and with respect to weeds along the streets, they were abated by the City's Public Works Department but if it was private property, Mr. Hughes should let her know.

VOTE ON MOTION to close the public hearing:

Ayes: 5

Vice Mayor Dixon commented that she had passed on complaints to the Fire Department she received from residents at various times over the last 12 years and so people can also call members of the Council.

Mayor Esteves commented that some of the properties on the list were the same as on previous lists and inquired if there was a greater penalty for repeat offenders. Fire Marshal Joki responded that the Fire Marshal's Office will go through and abate the locations where there were reoccurrences and Milpitas staff tried to use a personal approach to educate the property owners.

MOTION to adopt Resolution No.7265 ordering the County Fire Marshal to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

M/S: Dixon, Livengood.

Ayes: 5

2.
Appeal of Planning
Commission Action
Home Depot

Assistant Planner Troy Fujimoto reported the item before the Council was an appeal of the Planning Commission's six-month review and additional condition of Use Permit No. 1555 (Home Depot at the Great Mall location). For the benefit of those not familiar, Mr. Fujimoto provided a brief history of the Home Depot reporting that Home Depot relocated from Landess Avenue to the Great Mall to a larger store to allow them to remedy the outdoor storage issue they had at the Landess location; since the opening of the store, there have been issues including outdoor storage, general housekeeping, and noise; in July 2001, the Great Mall and Home Depot Task Force was created to help resolve these issues at Home Depot as well as those at the Great Mall; the Task Force worked with Home Depot to resolve these issues and progress was made; and in November 2001, Home Depot applied and received approval for an application for a screen wall, new enclosures, and a parking reconfiguration. Mr. Fujimoto further reported in April 2002, Home Depot went before the Planning Commission for a six-month review as required by Use Permit No. 1555; the Planning Commission chose to continue the item for another six months due to unresolved compatibility issues; subsequently, in October 2002, the six-month review came back before the Planning Commission and the Commission added the new condition for the screen wall. Mr. Fujimoto reported the applicant appealed this decision and presented two points against the new condition: (1) the new condition was not authorized by Condition of Approval No. 21 as there is no incompatibility between Home Depot and neighboring residential uses; (2) the new condition was not authorized by the Milpitas Zoning Ordinance or by any other provision of law. With respect to the applicant's claim of no compatibility, Mr. Fujimoto said there was sufficient evidence of an outdoor storage problem and that the condition is warranted. Mr. Fujimoto showed some photos that were taken at the Home Depot northern loading area at various times (June 2002 through January 2003) showing products from Home Depot sitting out in the parking lot. Mr. Fujimoto also reported that a letter was submitted from the Parc Metropolitan HOA, speaking on behalf of the entire development, in regard to the outdoor storage that occurs at Home Depot and reiterating their displeasure over the outdoor storage that does occur at Home Depot. Mr. Fujimoto further reported the Planning Commission has broad authority to impose conditions on Conditional Use permits, the Zoning Code also directs the Planning Commission to consider normal planning considerations such as noise, odors, health, safety, peace, comfort, and welfare and the like, Condition of Approval No. 21 implicitly authorizes the Planning Commission to impose new condition on the Use Permit as necessary to meet the requirements of the Zoning Ordinance and make the determination of compatibility, unscreened outdoor storage is not permitted by the Zoning Code, the frequency of this happening was valid to consider the activities as storage, and the City Council made it clear by the adoption of the Zoning Ordinance that it requires all outdoor storage of such things such as trash and materials to be within a completely enclosed building or behind a reasonably obscure wall or tight-board fence. In closing, Mr. Fujimoto said since Home Depot accepted the benefits of the Use Permit, it cannot now argue that conditions have been invalid.

Mayor Esteves opened the public hearing and invited comments from the audience. City Attorney Mattas advised the Council may wish to hear from the applicant first.

Dave Jabber, Store Manager at the Home Depot at 1177 Great Mall Drive, said in reference to staff's report and some of the photos, in some of the photos there was an incredible amount of steel beams and just a real flea market type of atmosphere back in the month of June; for reference, during that month all California Home Depot Stores were going through a major safety remodeling taking level height of racking inside the store from 16-foot down to 12-foot, and basically the Landess store had four weeks to do it which meant there were a lot of steel beams that were being pushed out of the store with no where to put them. Mr. Jabber said it kind of spilled over for a week into the parking lot, which he was able to straighten out and ship out down to Southern California where it was supposed to go. Mr. Jabber also said in defense of the pictures, it was a one time only thing that will never happen again; the other pictures were of day-to-day operations of the business and you can take a camera to this store any day of the week (Monday to Friday) and take the same pictures – a truck is unloaded, the freight is dropped right outside the door, the driver is signed out, and the driver leaves; then we go ahead and bring the freight inside the store. Mr. Jabber said in reference to the latest photo, you can see a forklift outside the door and the three pallets of salt sitting out there; his associates are trained when they unload trucks, they sign the driver out, they bring the freight inside the building, and, sometimes, they may get called away from that duty to go take care of a customer inside the store, they help the customer, and go right back out the door and resume what they were doing. From that respect, Mr. Jabber said he didn't see any violation of any Conditional Use Permit; furthermore, the permit calls for what they consider to be storage of outdoor products; he doesn't store anything outside the building; on the north end it is unloaded off the truck, he may stage it there for a little while and then bring it inside the store. Mr. Jabber said it doesn't sit out there overnight, it doesn't sit out there past 7:00 p.m., which was his deadline and when the door has to be down, everything has to be inside the building, which was a condition that the City put on the store upon opening back in June 2001. Mr. Jabber commented that he had been managing the store since the 3rd of December of 2001 and had never received one complaint from any neighbor about any noise restriction and/or any compatibility issues in regards to unscreened "storage"; he also expressed at the last Planning Commission meeting back in October his displeasure of being called the bad neighbor when he has never even met any of the neighbors and not one of them has voiced a complaint to him. Mr. Jabber said he didn't feel that he had violated anything and thanked the Council for listening.

Matthew Francois, Cassidy, Shimko and Dawson, on behalf of Home Depot, said the Council was probably sitting up there asking themselves why are we here – why is this issue before you – it seems like a relatively simple matter that should have been addressed at the staff level and Home Depot was asking themselves the same question. Mr. Francois said they felt as if they've tried to accommodate staff and bend over backwards in order to accommodate the City in general in terms of operating the store at the Great Mall; they like very much being in the City of Milpitas; they like being a good neighbor to Parc Metropolitan and to Monte Vista; many of the residents were customers of their store, but the simple fact of the matter was that not a single one of those residents had lodged a complaint – not a single resident from either association was in attendance at the Planning Commission hearing or even sent a letter to the Planning Commission in opposition. Mr. Francois further stated they were left wondering where was the evidence justifying that something needs to be done here. With respect to the photographs, Mr. Francois said Mr. Jabber explained the photographs and there was one letter sent in seven months from the property management association of Parc Metropolitan referencing essentially the same thing that's in the photographs (unscreened, outdoor storage); but, Mr. Jabber explained that they load and unload the products at the northern end of the store, which was permitted by the Use Permit, and the northern door is closed at 7:00 p.m. every evening. Mr. Francois said the wall would create a whole slew of its own problems – 15 parking spaces would be eliminated as a result of the wall; it would be 9 feet by 135 feet (or some 1,200 square feet) and would be a prime magnet for graffiti artists; Home Depot would be responsible for making sure that the graffiti was cleaned up, which would be an added cost to the wall; it would interfere with delivery operations on the northern side of the store in that delivery trucks won't be able to maneuver around that area because the wall will essentially be blocking/bisecting that area so that trucks cannot turn around. Mr. Francois stated they believed there was no demonstrated need for a wall, they liked being in Milpitas and thought they provided benefits to the City; there were conditions they have to live up to and they were more than

willing to do that. Mr. Francois asked for the Council's support in upholding their appeal and deeming Home Depot to a satisfied Condition No. 21.

Mayor Esteves invited comments from the public.

Paul Hay, speaking as Chair of the Milpitas Planning Commission, said that some time ago, staff brought to the Commission a concern relating to visual and noise impact on the neighbors in that area; the Planning Commission imposed a condition on the project (a wall) to mitigate those conditions/impacts; the representatives of Home Depot, at that time, acknowledged there was a problem, a potential problem because it was early on in the construction, and they agreed to put the wall in. Mr. Hay further stated the Commission went forward with that and after a six-month review, staff came back and said they needed the Commission's help because they weren't getting any response from Home Depot; the Commission reaffirmed (at that time) the need for the wall. Mr. Hay said he believed very definitely that there was a problem that needs to be mitigated, a letter was received from the management of the Parc Metropolitan, he was present to put an exclamation point on the Planning Commission's recommendation and asked that the Council support the Planning Commission on this and support staff.

MOTON to close the public hearing.

M/S: Livengood, Dixon.

Ayes: 5

Councilmember Livengood said he needed to get a couple of things straight in his mind about the difference between what he heard from Mr. Hay and what he heard from Home Depot; what he heard from Mr. Hay was that this wall was a part of the original approval of this project and he needed to know was that the case or not. Planning Manager Tambri Heyden explained the wall was not a part of the original use permit approval; based on testimony given by Home Depot when the use permit was considered, there would not be any outside storage; the Planning Commission and City Council did not put in place any conditions related to screening; on the premises, there would be no outside storage; the wall came after Home Depot opened in July of 2001, and the Task Force was put in place immediately upon Home Depot opening; four months after Home Depot opened, working with the store manager at that time, Home Depot came to the Planning Commission with this concept of a wall. Councilmember Livengood asked for clarification that Home Depot was the first one to walk in the door and say they wanted to put a wall up here. Planning Manager Heyden responded yes, but upon the prompting and working with the Task Force and convincing them the need for the wall.

Councilmember Livengood asked if any other alternatives not as expensive as the wall were discussed noting that he wasn't questioning either the Planning Commission or the City Council's ability to require this wall; what he was questioning was the cost for this wall, according to the estimate it was \$134,000 – and, that was a lot of money, especially in this kind of economic time. Ms. Heyden responded yes, it was but the north side of Home Depot provides very little opportunity – there's very little green space; there is currently landscaping there, trees and shrubs; but, because of the narrowness of that landscape strip, it really does not afford the kind of density/thickness of a hedge or tree canopy to provide the kind of screening that would be needed. Ms. Heyden said she thought, given the fact that the City Council, by virtue of adopting the Zoning Code, has more or less given the direction of what is compatible and what isn't, the lack of tolerance for unscreened storage; if staff knew then what it knew now, they would have gotten some sort of screening – be it a wall, landscaping where the loading/unloading took place – there would have been a lot more options at that point in time.

Councilmember Livengood asked for clarification that Home Depot had indicated there were 15 parking stalls that would be lost by virtue of this wall installation. Planning Manager Heyden responded when the wall site plan was approved at the Planning Commission, it included with it the relocation of the 15 parking spaces; 15 would not be lost; the parking on that side of the building was to be encouraged for employee parking. Councilmember Livengood asked if it would be possible to expand into the parking somewhat on the south side of the current landscaping strip and create the density of landscaping he mentioned earlier. Ms. Heyden said that was a possibility, the Chair of the Planning Commission mentioned earlier there was a six-month review; at that time, the Planning

Commission didn't dictate a solution, but recognized there was a problem and gave Home Depot six months to come back and tell them what they thought the solution was.

Councilmember Livengood commented that he sensed there was a lot of animosity flying around between Home Depot and City staff; he was not here to debate that but to solve the problem and if the only solution was a \$135,000 wall, he had a problem with that based on the current fiscal situation in the City; he was not against finding a solution to this problem but was not convinced yet the solution was a wall.

Vice Mayor Dixon said she thought we have to get beyond the point of what's storage and what's out there looking like storage (staging area versus storage); having served on the Planning Commission for six years, she knew the other Home Depot was a sore spot and she wasn't here tonight to even remotely compare this operation to the one further up on Landess. Vice Mayor Dixon further stated from her perspective, she thought the issue would have been dealt with differently if staff had done things differently in the beginning when this building was planned; this was located at a major entrance to one of the City's largest revenue generators – at a major entrance into this Mall and if the time comes that Comet is closed off, there will be even more traffic coming in and out of this entrance. Vice Mayor Dixon said taking that into account, she would really like to see some type of screening because it will never be possible to separate out the staging, Home Depot needs to be successful, and she thought there were other alternatives that maybe weren't approached.

Mr. Jabber said six months ago when they went before the Planning Commission, they just didn't want to see products outside the buildings, they freed up some interior storage space to try and keep things from being unloaded from trucks and sitting out there, and they changed staff requirements at the back door. With respect to the wall as proposed by staff, Mr. Jabber said it would not screen the receiving operation from people driving into the Great Mall and a 9-ft. wall would create huge problems. Mr. Jabber indicated his willingness to do whatever the City wanted, he had complied with all the complaints of the Fire Marshal, he changed the receiving hours at the store from nights to day time (7:00 a.m. – 4:00 p.m.) so it won't create noise at night, and he felt he had done everything he possibly could. Mr. Jabber expressed concern that a wall would be littered with graffiti, relocating 15 parking spaces to the back of the building would not be safe for his employees, and even if the wall is built, you would still see the trucks pulling in and unloading.

Councilmember Polanski said she has lived in Milpitas for 26 years and had seen the concerns of Home Depot over the years and questioned what assurances there were that things will continue over the years because she believed Home Depot has been a good neighbor but there was always the concern that things will change if something wasn't done now. Councilmember Polanski further stated she still thought there must be something that could be done to eliminate some of the visual impact, there should be a workable solution, it appeared the Council had the right to do something of this nature, but she thought some of it was based on the fact that for years there have been complaints about Home Depot at the other location.

Councilmember Gomez said he agreed with his colleagues, he was not certain a wall was the answer, but he was willing to look at other ways to mitigate the issue.

Councilmember Livengood said his suggestion would be that we recognize there is a problem that needs to be solved. Councilmember Livengood inquired if the task force was still active. Ms. Heyden responded it used to meet on a regular basis but now only as needed. Councilmember Livengood suggested the task force get back together and the Council direct them to look at other solutions.

Mayor Esteves said he didn't have a problem exploring all alternatives but he did think there was a problem. Mayor Esteves further stated he would like to put a time limit on how long this should take.

MOTION to direct staff to look at other alternatives to address the issues to see if a compromise might be worked out and report back to the Council in 60 days (the second meeting in March).

M/S: Livengood. Dixon.

City Attorney Mattas suggested the Council may want to get concurrence from the representatives of Home Depot. Representatives in the audience indicated their concurrence and said they would like to be on the task force. City Attorney Mattas noted for the record that the Home Depot representatives had concurred.

Isaac Hughes suggested Home Depot might want to look at putting up anchor poles and put up wire fencing with netting and planting ivy for quick growth.

VOTE ON MOTION:

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 9:25 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of January 7, 2003, including joint meeting with the City Council, as submitted.

M/S: Dixon, Livengood.

Ayes: 5

**RA4.
AGENDA**

Vice Mayor Dixon asked that item RA6 be removed for discussion.

MOTION to approve the agenda and consent calendar as amended by the removal of item RA6..

M/S: Dixon, Polanski.

Ayes: 5

**RA5.
CIVIC CENTER
PROJECT**

Redevelopment Projects Manager Greg Armendariz reported before the Council were two contracts recommended for initial acceptance, Sasco and BBI Engineering, leaving six contractors to complete punchlists. With respect to change orders, Mr. Armendariz reported 19 change orders were recommended for approval totaling \$174,281; the largest change order with Division II added back a credit change order for \$151,222. Mr. Armendariz reviewed total cost recovery from 10 contractors totaling \$200,940 and total cost recovery from seven vendors and consultants totaling \$145,812, for a total cost recovery of \$346,752. Mr. Armendariz also reviewed the project expenses reporting the total project contingency remaining was \$486,349 after the net credit of tonight's cost recoveries minus the change orders.

Vice Mayor Dixon said she wanted to make the public aware that Mr. Armendariz and his staff worked above and beyond showing great tenacity in going after some of these contractors. Vice Mayor Dixon expressed appreciation to Mr. Armendariz commenting that every dollar earned back was greatly appreciated.

Councilmember Livengood asked for confirmation there were only two outstanding contracts and asked when they would be completed. Mr. Armendariz responded there were three contracts, staff was close with two, but he didn't have a completion date. Councilmember Livengood said he would like to receive a memo providing an update on where those claims are and the magnitude of all three remaining claims.

Isaac Hughes said he hadn't seen any total for the dollars spent on the Civic Center and had yet to see the total amount for all not-to-exceed contracts added to the Civic Center and added to the money the City says it has spent. Mr. Hughes further stated every single penny should be accounted for, he thought that was the responsibility of Mr. Wilson, and he hadn't seen the relevancy of why we ask people to take over these projects and money is wasted and people need to own up to what they did and how they made mistakes.

MOTION to adopt Resolution No. 7266 (BBI Engineering, Inc.) and Resolution No. 7267 (SASCO) granting initial acceptance of contract work for contracts listed in the contract summary list, subject to a one-year warranty period and reducing the faithful performance bond to 10% of each contract; approve contract change orders included in the contract change order summary sheet (19 totaling \$174,281).

M/S: Dixon, Polanski.

Ayes: 5

**RA6.
AFFORDABLE
HOUSING UNIT**

Vice Mayor Dixon removed this item from the Consent Calendar and stated this had to do with a unit at 24 Rain Walk in the PARC Metropolitan residential development and was one of the affordable units; for it to remain affordable, the City has 90 days to find a potential buyer and complete escrow; and she just didn't want this to get past the Council on the Consent Calendar. Vice Mayor Dixon noted that the deadline was February 19, 2003, the staff recommendation was to have the City purchase the unit, and she wanted the information to go out over the air waves that the property at 24 Rain Walk was available and anyone interested should contact the City.

Mayor Esteves asked what the estimated market value was. Principal Housing Planner Felix Reliford responded about \$435,000. Mayor Esteves inquired about the selling price. Mr. Reliford responded \$326,000.

MOTION to authorize the City Manager to have the Milpitas Redevelopment Agency purchase the below market rate unit at 24 Rain Walk at PARC Metropolitan in the amount not to exceed \$326,500 and directed staff to continue to find an eligible moderate-income household to purchase the unit.

M/S: Dixon, Livengood.

Ayes: 5

***RA7.
CITY/AGENCY
AGREEMENT**

1. Approved agreement amendment between the City of Milpitas and the Milpitas Redevelopment Agency for the Construction of Public Improvements.
2. Adopted Resolution No. RA197 Declaring Intention to Reimburse Expenditures from the Proceeds of Obligations to be issued by the Redevelopment Agency.
3. Authorized the Executive Director to enter into an Agreement for Lobbying Services with Ken Emanuel in an amount not to exceed \$2,500 per month for 12 months.

***RA8.
RGC COURTHOMES**

Approved authorization to enter into negotiations with RGC CourtHomes, Inc., to provide Agency finance assistance from its affordable housing set-aside funds.

**RA9.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:42 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS

**3A.
Opposition to
Governor's Proposal
To Take VLF Revenues**

Mayor Esteves reported this item had also been discussed and endorsed by the Santa Clara County Cities Association to reject the Governor's proposal to shift local vehicle license fee (VLF) revenues and honor a 1998 commitment to restore the VLF. City Manager Wilson added that this effort was going on across the State and Assemblymember Dutra was asking the City to assist in the effort; this was the Governor's attempt to solve the budget crunch at the State level but it was terrible for local jurisdictions; for the City of Milpitas, it meant diverting on an annual basis \$2.5 million from the General Fund.

Vice Mayor Dixon commented that this really had a trickle-down effect to the degree we don't even know; at one of the Santa Clara County Library meetings, it was reported the impact alone would be at least \$800,000 which would ultimately be passed on to the nine participating cities in the joint powers authority.

MOTION to adopt Resolution No. 7268 urging the California Legislature to reject the Governor's proposed shift of local Vehicle License Fee (VLF) revenues and to honor the 1998 commitment to

restore the VLF; approve sending letters to the Governor and State Legislature with copies of the resolution.

M/S: Esteves, Livengood.

Ayes: 5

3.
All America City
Competition

City Manager Wilson explained that following the Council's direction last September, staff had proceeded to work on the All America City Competition application; the process was divided into two parts; the first part was a very structured written application that addresses accomplishments in solving specified problems and must focus on three specific projects that provide solutions to city-wide problems; and one of those issues had to address and solve a problem related to youth. Mr. Wilson further explained that an 18 member committee representing all City departments had been formed and been active; the second part of the competition was a live presentation; technological presentations were recently restricted; 30 cities would initially compete and be judged with the top ten being awarded the All America status. Mr. Wilson reported the deadline for applications was March 31; four issues to write about had been identified and the committee would be selecting three to write about. Mr. Wilson further reported the project was on track and at this point, other than staff time, approximately \$275 of the Council authorized budget of \$75,000 had been spent for the annual membership in the National Civic League; and costs would be increasing in the future with the major expense anticipated for travel to Washington D.C. for the competition.

Mayor Esteves asked the City Manager for a clarification on the cost. Mr. Wilson responded that if selected in the first year, the total cost for this effort would be included in the \$75,000; some cities were very successful in their first applications but a higher percentage were awarded the designation based on the second year competition; if Milpitas was selected as one of the final 30 but not the final 10, the Council would have to address the competition another time and that would take another \$75,000. Mayor Esteves explained he asked for review of the project because at this point not much money had been expended and with the current economic situation, he thought this was something that could be deferred; while it would be great to be an All America City, he questioned if it was worth spending the \$75,000 right now and that was why he placed this on the agenda to ask his colleagues to defer participation in the competition at this time.

Councilmember Gomez inquired what the benefits were as he was trying to weigh the cost versus the benefits. City Manager Wilson responded there was a substantial benefit in the stature and profile of the communities that are successful since only 10 are designated each year; it defines a community base and defines a participation and relationship of the governing body and staff to its community; it provides some halo impact as far as the quality of the city; it can be helpful as a tool for economic development; and it places the city in a reasonably elite category of cities.

Councilmember Polanski said she was familiar with the Council's decision to go ahead; however, things had changed dramatically in the last months since that decision and she questioned if it was the most fiscally responsible thing to be doing at this time; looking down the road and looking at a 50th celebration for the City next year (included later on the agenda in the CAC's Work Plan), she would hate to think we would expend what little funds we have on the possibility of winning a competition, especially with the economy the way it is, and supported holding off until the economy turns around.

Vice Mayor Dixon said she wasn't in support of this last fall, there was no guarantee, and thought the City would really be in \$150,000. Vice Mayor Dixon further stated the City was about a week away from celebrating its 49th anniversary with a big celebration coming up in January 2004; she felt this is such a great community, a cohesive community, and a diverse and safe community, and if we are going to do anything, she wanted to start the wheels rolling to do something for us because if we don't do it ourselves, it won't happen; this could always come back but she thought the focus should be the economy but still having the revenues to do things for us and the community.

Councilmember Livengood said his opinion about the All America City competition hadn't changed, it was a great opportunity to bring the community together and showcase our accomplishments, all cities who have won say it is very positive experience that brings kids together and the schools to showcase the community and a great way of moving Milpitas to a place of prominence; however, he couldn't argue with issues relating to finances and he would be making a series of proposals that will be cutting

things and he hoped the same level of concern about money would be there when he makes his proposals. Councilmember Livengood said he would be happy to say let's take a second look at this and all the votes we have done in the past on things, but he was still interested in pursuing this some day because he thought it would be a tremendous benefit for the City.

Ed Connor said he would like to see a copy of the prerequisites for the competition. Mr. Wilson said the information was available on the National Civic League's web site.

Isaac Hughes asked if Mr. Connor asked for copies of the documents. Mr. Wilson said the criteria was formatted by the National Civic League and available on their web site. Mr. Hughes said he wanted a copy of the documents sent out and also wanted to know the total staff cost for the extensive time placed in this competition by staff and what it was going to cost for the City to do this; and expressed concern there wasn't money to pave the streets or fix the tennis courts, a lot of money was spent on City Hall, and he didn't think any money should be spent on this project.

MOTION to defer participation in the All America City Competition until further direction from the Council.

M/S: Esteves, Dixon.

Ayes: 5

5.
Broadcasting Council
Meetings on the Internet

Councilmember Gomez said he would like to break this item into two parts; the first part being consideration of broadcasting City Council meetings on the Internet because he believed residents really have the right to know what the City Council is doing and that right was more important than any interest government may have in limiting public access to information; what goes on in the Council Chambers was the public's business and residents have two ways to find out – by either attending the meetings or watching them on Channel 15; Channel 15 is only available to 61 percent, or 10,000 households in the City (meaning 7,000 households or 20,000 residents only have the option of viewing the meetings from the Council Chambers which was unrealistic for residents who want to follow Council meetings to have to be in the Council Chambers). Councilmember Gomez said he brought this to staff last week and staff said they would need some time to look at the costs of broadcasting over the Internet, so he would like to get ideas from his colleagues as to what they thought about this.

Vice Mayor Dixon said this was ultimately part of the long-term goal for even further public access to the Council and was and remained her number one priority; at the CEPAC meeting last Thursday, Terry Medina gave a very interesting detailed report on what IS is doing and she believed that was one of the questions; she also heard the cost was \$60,000 but wasn't quite sure if that was the initial cost or a ballpark figure.

Information Services Director Bill Marion said staff had started researching various options but would like to come back with detailed cost information; a rough estimate of the start-up cost was \$20,000 with annual reoccurring costs ranging from \$6-18,000 but staff needed time to do more research. Vice Mayor Dixon inquired as to the possibilities of having live audio of Council meetings on the City's radio station 1620. Mr. Marion responded that was a possibility, the current equipment was somewhat limited but if the Council would like, staff could consider that along with broadcasting over the Internet. Vice Mayor Dixon said radio might be more feasible since the City had the channel and the license and it could include the Planning Commission; she had no problem with it but just thought that fiscally right now it may be too much but would wait until the information came back.

Councilmember Livengood said he was more concerned about the live streaming rather than archiving, he was glad this was on the agenda and would like to at least explore this and see what the options are because there are a number of people who don't have access to Channel 15; it may not cover all basis but we should try to cover as many as we can; and radio, too; and he would like to see some numbers come back.

Councilmember Polanski said she agreed with the comments that had been made and looking at radio, too; when looking at alternatives and the cost, it should be taken into consideration that meetings sometimes run four to five hours, which could be expensive and people would need quite a computer, so the capabilities of people in their homes should be looked at.

Councilmember Gomez thanked Vice Mayor Dixon for suggesting radio and inquired if the radio station covered the entire City. Mr. Marion responded yes, it had very good coverage.

Mayor Esteves said he didn't have a problem with this but for staff to come back with more logical alternatives, the Council needed to provide more specifics such as what "City meetings" meant. Councilmember Livengood said it should be limited to meetings held in the Council Chambers.

MOTION to direct staff to return with alternatives and cost information on broadcasting City Council and Planning Commission meetings over the Internet and the City's radio station.

M/S: Gomez, Livengood.

Ed Connor expressed concern for the capacity people would need to take advantage of this and felt that would be a drawback but something to consider.

Isaac Hughes asked if once you broadcast on the Internet, would a CD also be made available for people to purchase; it would be cheaper to sell a DVD or CD than a videotape of the meeting that cost \$20. Mr. Hughes objected to having to ask all his questions before receiving a response. Mayor Esteves said comments were limited to two minutes and once the two minutes were up, Mr. Hughes' questions would be addressed.

Bill Marion responded to Mr. Hughes' question regarding reproduction of tapes if this was to go forward and said the City would have the capability of reproducing DVD's or CD's.

Sam Robinson said simulcasting technology just wasn't there yet; he was all for broadcasting meetings on the Internet live or time delayed but questioned how many people who don't have cable television have a cable modem or DSL; he thought you wouldn't find many people who don't have television but have DSL so he wasn't sure this was worth doing.

Councilmember Gomez asked the percentage of residential subscribers through cable and DSL. Mr. Marion responded in a report from the San Jose Mercury News, not specific to Milpitas but in general, 68 percent of the population in the Bay Area does have some sort of Internet connection; 43 percent have broadband access, DSL at the moment was the preference, and a high percentage of the population have some sort of Internet connection.

VOTE ON MOTION:

Ayes: 5

Councilmember Gomez said the second part of his request was to publish staff reports on the web site, including those for the Planning Commission, as it would save staff time and also would be a public benefit. Mr. Marion commented that last November staff began working on putting the staff reports for Council meetings on the City's web site; if the recommendation was to include the Planning Commission reports, other than the staff time, it would be easy to do.

Councilmember Livengood said as many public documents as can be put on the web site, the better; he thought there were people who would not take the time and energy to come to City Hall but would be willing to use the computer to get the information. Councilmember Livengood also suggested putting staff reports, campaign financial disclosure forms, all things people typically request from the City Clerk made sense that it be available on the web; it made a lot of sense and would make it convenient for the residents; and he would like to take it as far as it could be taken.

Councilmember Polanski said she thought it would be very beneficial to put all of the things mentioned by Councilmember Livengood on the web if current staff time and workload permitted. Mr. Marion said staff was also working on a document-imaging project. Councilmember Polanski said she thought we should continue to put as much as is available on the web but within the current staff time constraints.

Vice Mayor Dixon said she was ecstatic at the things that could be made available such as financial statements and the 730 forms and they should be made available as soon as possible; she knew Mr. Hughes comes in and requests all kinds of records which could be put on the web and inquired if there was the capability down the road to have documents that were on microfilm and microfiche scanned to have them available on the web and also making a couple of computers available in the lobby for the public to view the documents. Mr. Marion said staff was converting microfilm to images and it would be very easy to set up an application to access them. Vice Mayor Dixon said it appeared there was consensus that all public records could be made available, to have staff come back with a timeline where certain areas can be accommodated, and she thought it would be a benefit to the Council also.

Mayor Esteves said there were several areas where this could be applied, such as in the permit area, but because there were so many applications, they might need to be prioritized and scheduled. Mr. Marion suggested staff come back with a status report on the document-imaging project along with a timeline for making certain documents available.

MOTION to direct staff to come back with an appropriate timeline and report on everything that could be made available to the public electronically, taking into consideration all of the Council's comments.

M/S: Dixon, Livengood.

Ayes: 5

RECESS

Mayor Esteves recessed the City Council meeting at 10:33 p.m. The City Council meeting reconvened at 10:41 p.m.

UNFINISHED BUSINESS

6. Off-Leash Dog Park

Assistant City Manager Blair King reviewed the project to develop an off-leash dog park at the former group picnic area near Sandy Wool Lake in Ed Levin Park. Mr. King described the proposal to lease approximately two acres from Santa Clara County and to improve the site with a five-foot chain link perimeter fence, a four-foot high interior fence to divide the large and small dogs, a six-foot high landscaped berm along the eastern site of the dog park, turf, landscaping, decomposed granite, benches, kiosk, and a ten-stall parking lot. Mr. King reported no comments were received during the comment period for the Negative Declaration, a 15 year lease with the County was proposed, with a ten year extension; should the City terminate the lease during the initial term, the City would be required at the County's discretion to pay \$16,800 per year to the County for operational costs for the remainder of the unexpired initial term or remove the improvements at the City's expense; in order to avoid potential over use at Ed Levin Park during peak periods, upon a 24-hour notice by the County, the City would be required to close the dog park but no more than 12 times during a year; and the City would be responsible for the maintenance of the park estimated at \$35,000 a year. Mr. King said the items for Council approval included the resolution adopting a Negative Declaration, the lease agreement, a supplemental budget appropriation of \$122,000, and approval of the project plans, specifications, and authorization to bid.

Councilmember Livengood inquired about the hours and days of operation. Mr. King responded the park would be open seven days during day light hours consistent with the hours at Ed Levin Park. Councilmember Livengood asked if it would be staffed everyday. Mr. King said it won't be staff but would be checked periodically. Councilmember Livengood asked if there was an issue, would Park Rangers respond to any disputes. Mr. King responded either the Park Rangers or the Milpitas Police Department would respond and an ordinance establishing rules for the dog park would be coming to the Council for approval. Councilmember Livengood said if possible, it would make sense to have the Park Rangers respond first and if they can't handle it, then call the police.

Vice Mayor Dixon said she was really excited to see this come commenting that it was one of the ten top things requested by residents in Milpitas when she was campaigning in 1996. Vice Mayor Dixon said her one concern was what happened in the City of Fremont and its approval in September of \$248,000 to rehabilitate a dog park that opened in January 2001 and asked if we were learning anything from their mistakes. Mr. King said Fremont tried to do it cheap and was now putting in one close to the one Milpitas is putting in.

Councilmember Polanski said she thought this was exciting as well and asked for clarification that the total cost was \$311,000, \$189,000 was already available, and an additional \$122,000 was coming from the Park Fund which was restricted for parks but undesignated. Mr. King said the \$122,000 was coming from the unrestricted unallocated funds for park improvements. Councilmember Polanski urged caution in selecting the public art in the dog park since this was a remote location and the City was responsible for maintenance and any damage that might occur to the art.

Mayor Esteves expressed concern that 10 parking stalls might not be enough. Mr. King said the peak use time at Ed Levin Park is on the weekends and the peak use at dog parks is usually weekdays at the end of the day so the parking should be adequate. Mayor Esteves also expressed concern that the 24-hour notice for closing the park may not be enough time and asked if it could be negotiated to a two or three day notice. Mr. King said 24 hours was the minimum notice and he thought the County would provide plenty of notice. Mayor Esteves asked who would assume the liability for the dog park, the County or the City. Mr. King said the City would be accepting the liability. City Manager Wilson added that it would be included within the City's ABAG coverage. Mr. King said that in checking, it was found that there was no history of claims associated with dog parks.

Greg Haas said he had been a proponent of a dog park for five years, ever since Vice Mayor Dixon made the motion at the Parks, Recreation, and Cultural Arts Commission meeting and said he wanted to take the opportunity to thank the Mayor, Vice Mayor and Councilmember Livengood for their past and continued support and asked, encouraged, and welcomed the support of new Councilmembers Polanski and Gomez. Mr. Haas also thanked Mr. Wilson and Mr. King for their encouragement and support in keeping the project moving forward with the County. Mr. Haas said he thought self-policing and peer pressure probably worked better in this environment than most and he didn't think clean up would be a burden. Mr. Haas passed around a map showing all of the off-leash and on-leash locations where you can now take dogs and conspicuously missing was anything in Santa Clara County.

Sam Robinson expressed concern that to get to the dog park, you have to go through the County gate and pay \$3.00, and asked if the City could keep the \$3.00. Councilmember Livengood responded that was something talked about a long time ago so that the fee wouldn't be part of the process but couldn't figure out a way to do it. Vice Mayor Dixon said there are some dog facilities that charge even more. Mr. King clarified that there was a charge but there was also an annual pass that reduces the amount. Mr. King further clarified that the lease agreement does require the City to respond first to public safety issues but there have been discussions with the County and the County has requested that we adopt the rules by ordinance which would be helpful to the Park Rangers in assisting.

MOTION to adopt Resolution No. 7269 adopting a Negative Declaration for a dog park at Ed Levin County Park; approve a lease between the City of Milpitas and County of Santa Clara for a dog park at Ed Levin Park; approve a supplemental budget appropriation in the amount of \$122,000 from the Park Fund Unreserved, Undesignated Fund Balance for the dog park project CIP (5072); and approve project plans and specifications and authorize advertising for bid proposals for construction.

M/S: Dixon, Polanski.

Ayes: 5

NEW BUSINESS

7. CAC Work Plan

James Lindsay briefly commented that the Community Advisory Commission (CAC) adopts a Work Plan each year, reviewed some past work plan accomplishments, commented on the proposed Work Plan (items listed on the agenda), noted that the Chair and some members of the CAC were present, and the recommendation was to adopt the plan as submitted.

Councilmember Polanski said she could attest to the fact that the members of the CAC have worked very diligently on this plan, they were a very dynamic group of people, the work plan they have set out may seem somewhat aggressive to some people, but with the Commissioners on the CAC, it would be accomplished.

MOTION to approve the proposed 2003 Community Advisory Commission Work Plan.

M/S: Polanski, Dixon.

Al Garcia said he thought this work plan was an effort to work for the community and work on the Council's behalf to make some things happen in Milpitas which they thought would be of great benefit, and he would be happy to answer any questions.

Mayor Esteves recognized other Commissioners present Ray Maglalang, Phil Cook, Marie Pham, and Sam Robinson, and noted when the plan was being developed, Councilmember Polanski was part of the Commission. Mayor Esteves noted that the City's 50th anniversary was included on the Plan and said he would be placing this on the Council agenda later on to include representatives of other commissions, but he was glad it was on the CAC's Plan.

VOTE ON MOTION:

Ayes: 5

8.
Flag Ceremony

Assistant City Manager King briefly reviewed the request from Boy Scout Troop 101 for permission to hold a flag ceremony at the Higuera Adobe on January 25, 2003, including raising both the American and Vietnamese flags.

Councilmember Polanski said she had no problem with the request for a flag raising at the Higuera Adobe as she believed it was the most appropriate place for ceremonies of this nature; she was also pleased to see the Council no longer approved these requests on consent; and she knew the Vietnamese Association along with the Boy Scouts have been very cooperative.

MOTION to approve the request for a flag ceremony at the Higuera Adobe on January 25, 2003, 10:30 a.m. to 12:30 p.m.

M/S: Polanski, Dixon.

Mayor Esteves said he would like to have one staff member there to insure that the rules for flag ceremonies were enforced.

VOTE ON MOTION:

Ayes: 5

10.
Cable TV Franchise
Renewal Progress

Vice Mayor Dixon removed this item from the consent calendar and stated she didn't think there needed to be a lengthy discussion but she thought it was important that the public know the process the City has to go through to renew the cable television franchise and she wanted the public to know that there will be a survey process along with the re-negotiation. Vice Mayor Dixon also commented on the recent price increase noting that after taxes, her latest bill was over \$91; when the bill started reaching \$100, she would begin looking for a dish but needed access to Channel 15, and asked if there was something that could be negotiated with AT&T to provide Channel 15. Information Services Director Marion said it was an item staff could pursue but given the number of local government channels in the area, it was not likely a satellite provider would want to pick them up. Vice Mayor Dixon further inquired about PEG access channels commenting that she was under the impression there would be a dedicated educational channel for the School District and wanted to know what happened and could there be more than one. Mr. Marion responded that was an item staff had already identified to pursue, there were provisions for more than one, and staff believed through the franchise we could obtain the channels to have separate public access, educational, and government stations. Mr. Marion noted that the Telecommunications Commission had similar recommendations in their Master Plan that would be coming to the Council next month.

Councilmember Polanski agreed with the need for an educational channel and commented that she had experienced problems with reception just recently. Councilmember Polanski said she was concerned with the cost for seniors and didn't understand why it wasn't possible to just purchase the basic service and get the government channel. Mr. Marion said it was somewhat constrained by existing Federal laws but staff would discuss various options that might be available.

MOTION to note receipt and file the staff report and direct staff to continue with the renewal via the formal process.

BIDS & CONTRACTS**14.
City Manager Contract
Amendment**

City Attorney Mattas reported the Council had before it the second amendment to the City Manager's employment contract and the City Manager wanted to make statement prior to the Council taking action. City Manager Wilson thanked the Council for the consideration provided by the Council through his review and through the proposal and the adjustment in salary. Mr. Wilson asked that the Council make only one adjustment to the proposal and that was to defer until future notice any consideration of a base salary increase (the proposal included a 2.5 percent increase) as he believed under the current circumstances we are all facing right now, that needed to be deferred. Mr. Wilson said he would appreciate the cost neutral inclusion of the car allowance in base salary. City Attorney clarified the City Manager's request would modify the proposed amendment to change number in Section 5 from \$184,771 to \$180,264, which would be the current salary plus the transfer of the auto allowance into the total compensation package; the contract also included the 2.7 percent at 55 retirement benefit, the same as for miscellaneous employees, and does require the Manager to pay the 8 percent employee contribution.

Councilmember Polanski said she wanted to say to the City Manager that she thought that during these critical times his willingness to defer any raise in compensation was to be commended; she knew that there were many people, not only in the City but probably throughout the County, finding themselves in one of the laid-off areas; she just wanted to thank Mr. Wilson for his offer and willingness to defer an increase until we see how the economy goes. Councilmember Polanski further stated even though she wasn't part of the evaluation process, she appreciated Mr. Wilson's willingness to work with her and all the direction and expertise he had provided to her as a Councilperson and to the City.

Mayor Esteves commented that as a Councilmember working with the City Manager for the last few years, he was very satisfied with the City Manager's performance so he would not have a problem with some increase but commended the City Manager for being a good example and hoped everybody would come forward and share the burden of these times.

Vice Mayor Dixon said there was not much more she could add to the comments. Vice Mayor Dixon further stated that she had been attending quite a few meetings in the region and this financial crisis was the likes we haven't seen before; as far as performance related, she thought Mr. Wilson was doing a pretty good job of communicating except in areas of touting where he has excelled; there had been great strides in the area of communication, the accomplishments this City has been able to reach, especially with regard to the budget reserves and management of various projects within the community, she couldn't say enough. Vice Mayor Dixon added her appreciation to the City Manager, noting there was a long hard road ahead but was hopeful through the cohesiveness of this Council, it will be able to represent this community like no other City has been represented to this date.

Isaac Hughes said there were many things he had public documents on and the public needed to understand that the \$180,000+ a year for one person on staff combined with the money provided to Mr. Wilson for a home and the money assisting with a car and considering the considerable retirement fund and the perks of his job, he didn't think it was responsible to give him a raise at this time. Mr. Hughes further stated he'd read parts of Mr. Wilson's contract but had never found on the public record what physical evidence or criteria was used to determine what this man is worth and he saw nothing on the public record to show he did his job.

Councilmember Livengood said he wanted to make sure he understood the motion before the Council included the two changes to Mr. Wilson's contract to include the car allowance into salary and included the 2.7 percent at 55 retirement program but did not include a pay raise. City Attorney Mattas added that the amount in Section 5 would be \$180,264 (the current salary plus the auto allowance).

MOTION to approve the second amendment to the employment agreement between the City of Milpitas and Thomas J. Wilson as modified by the City Manager to remove the proposed 2.5% salary increase.

M/S: Polanski, Dixon.

Ayes: 5

16.
Purchase Fire Engine

Vice Mayor Dixon removed this item from the consent calendar and commented that it had to do with the replacement of a 15 year old fire truck, four bids were sent out and only one bidder responded, and inquired if 15 years was the normal amount of time that the City has a fire truck. Purchasing Agent Lou Zenzen responded that was correct. Vice Mayor Dixon inquired if the \$367,727 for the truck going to take away from any other equipment for the Fire Department. Mr. Zenzen responded no because the money was coming from the equipment replacement fund.

MOTION to authorize the purchase of a new fire engine as a sole source purchase from Golden State Fire Apparatus, Inc. in the amount of \$367,727.56, including tax and shipping.

M/S: Polanski, Dixon.

Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:34 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on February 4, 2003.

Gail Blalock, City Clerk

Date